

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARIO VENTURA AND ROSALINA VENTURA,	:	Civil Action No.:
	:	08-cv-02765 (LLS)
Plaintiffs,	:	
	:	
-against-	:	<u>ANSWER</u>
	:	
NEW YORK CITY TRANSIT AUTHORITY,	:	
MTA NEW YORK CITY TRANSIT,	:	
METROPOLITAN TRANSIT AUTHORITY,	:	
MTA CAPITAL CONSTRUCTION COMPANY,	:	
THE CITY OF NEW YORK, and	:	
JUDLAU CONTRACTING, INC.	:	
	:	
Defendants.	:	
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Defendant JUDLAU CONTRACTING, INC. ("JUDLAU"), by its attorneys, LONDON FISCHER LLP, as and for its Answer to the Complaint, alleges, upon information and belief, as follows:

FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Complaint.

SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint.

THIRD: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Complaint.

FOURTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Complaint.

FIFTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Complaint.

SIXTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint.

SEVENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Complaint.

EIGHTH: Denies each and every allegation contained in paragraph “8” of the complaint.

NINTH: Denies each and every allegation contained in paragraph “9” of the Complaint.

TENTH: Denies each and every allegation contained in paragraph “10” of the Complaint.

ELEVENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint.

TWELFTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint.

THIRTEENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Complaint.

FOURTEENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint.

FIFTEENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Complaint.

SIXTEENTH: Denies each and every allegation contained in paragraph “16” of the Complaint.

SEVENTEENTH: Denies each and every allegation contained in paragraph

“17” of the Complaint.

EIGHTEENTH: Denies each and every allegation contained in paragraph “18” of the Complaint.

NINETEENTH: Denies each and every allegation contained in paragraph “19” of the Complaint.

TWENTIETH: Denies each and every allegation contained in paragraph “20” of the Complaint.

TWENTY-FIRST: Denies each and every allegation contained in paragraph “21” of the Complaint.

TWENTY-SECOND: Denies each and every allegation contained in paragraph “22” of the Complaint.

TWENTY-THIRD: Denies each and every allegation contained in paragraph “23” of the Complaint.

TWENTY-FOURTH: Denies each and every allegation contained in paragraph “24” of the Complaint.

TWENTY-FIFTH: Denies each and every allegation contained in paragraph “25” of the Complaint.

TWENTY-SIXTH: Denies each and every allegation contained in paragraph “26” of the Complaint.

TWENTY-SEVENTH: Denies each and every allegation contained in paragraph “27” of the Complaint.

TWENTY-EIGHTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Complaint.

TWENTY-NINTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the Complaint.

THIRTIETH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Complaint.

THIRTY-FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Complaint.

THIRTY-SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of the Complaint.

THIRTY-THIRD: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the Complaint.

THIRTY-FOURTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Complaint.

THIRTY-FIFTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the Complaint.

THIRTY-SIXTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of the Complaint.

THIRTY-SEVENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "37" of the Complaint.

THIRTY-EIGHTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "38" of the Complaint.

THIRTY-NINTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "39" of the Complaint.

FORTIETH: Denies having knowledge or information sufficient to

form a belief as to the truth of the allegations contained in paragraph “40” of the Complaint.

FORTY-FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Complaint.

FORTY-SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “42” of the Complaint.

FORTY-THIRD: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “43” of the Complaint.

FORTY-FOURTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “44” of the Complaint.

FORTY-FIFTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Complaint.

FORTY-SIXTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Complaint.

FORTY-SEVENTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “47” of the Complaint.

FORTY-EIGHTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “48” of the Complaint.

FORTY-NINTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “49” of the Complaint.

FIFTIETH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “50” of the Complaint.

FIFTY-FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “51” of the Complaint.

FIFTY-SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "52" of the Complaint.

FIFTY-THIRD: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "53" of the Complaint.

FIFTY-FOURTH: Denies each and every allegation contained in paragraph "54" of the Complaint.

FIFTY-FIFTH: Denies each and every allegation contained in paragraph "55" of the Complaint.

FIFTY-SIXTH: Denies each and every allegation contained in paragraph "56" of the Complaint.

FIFTY-SEVENTH: Denies each and every allegation contained in paragraph "57" of the Complaint.

FIFTY-EIGHTH: Denies each and every allegation contained in paragraph "58" of the Complaint.

FIFTY-NINTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "59" of the Complaint.

SIXTIETH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "60" of the Complaint.

SIXTY-FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "61" of the Complaint.

SIXTY-SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "62" of the Complaint.

SIXTY-THIRD: Denies having knowledge or information sufficient to

form a belief as to the truth of the allegations contained in paragraph “63” of the Complaint.

SIXTY-FOURTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “64” of the Complaint.

SIXTY-FIFTH: Denies each and every allegation contained in paragraph “65” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “65” of the Complaint as to other Defendants.

SIXTY-SIXTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Complaint.

SIXTY-SEVENTH: Denies each and every allegation contained in paragraph “67” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “67” of the Complaint as to other Defendants.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

SIXTY-EIGHTH: Denies each and every allegation contained in paragraph “68” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “68” of the Complaint as to other Defendants.

SIXTY-NINTH: Denies each and every allegation contained in paragraph “69” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “69” of the Complaint as to other Defendants.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

SEVENTIETH: Denies each and every allegation contained in paragraph “70” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “70” of the Complaint as to other Defendants.

SEVENTY-FIRST: Denies each and every allegation contained in paragraph “71” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “71” of the Complaint as to other Defendants.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

SEVENTY-SECOND: Denies each and every allegation contained in paragraph “72” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “72” of the Complaint as to other Defendants.

SEVENTY-THIRD: Denies each and every allegation contained in paragraph “73” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “73” of the Complaint as to other Defendants.

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

SEVENTY-FOURTH: Denies each and every allegation contained in paragraph “74” of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “74” of the

Complaint as to other Defendants.

SEVENTY-FIFTH: Denies each and every allegation contained in paragraph "75" of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "75" of the Complaint as to other Defendants.

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION

SEVENTY-SIXTH: Denies each and every allegation contained in paragraph "76" of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "76" of the Complaint as to other Defendants.

SEVENTY-SEVENTH: Denies each and every allegation contained in paragraph "77" of the Complaint as to JUDLAU, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "77" of the Complaint as to other Defendants.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Whatever injuries and/or damages the Plaintiff may have sustained at the time and place mentioned in the Complaint and/or as a result of the occurrence alleged in the Complaint, all of which is denied by JUDLAU, were caused in whole or in part by the culpable conduct of the Plaintiff MARIO VENTURA. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct, attributable to Plaintiff MARIO VENTURA, bears to the culpable conduct which caused said injuries.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Each risk and danger of loss or damage connected with the situation alleged in the Complaint were at the time and place mentioned obvious and apparent and were known by Plaintiff MARIO VENTURA and voluntarily assumed by Plaintiff MARIO VENTURA.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiffs were caused by the culpable conduct of some third person or persons over whom JUDLAU neither had nor exercised control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The liability of JUDLAU is limited by the provisions of Article 16 of the Civil Practice Law and Rules.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Any verdict, judgment or decision that might be obtained by Plaintiffs against JUDLAU shall be reduced by the amount of any collateral source payments received by Plaintiffs pursuant to CPLR § 4545(c) as determined by the Court.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff MARIO VENTURA's injuries, if any, were increased or caused by Plaintiff MARIO VENTURA's failure or neglect to properly utilize, adjust and/or fasten the safety devices available to him at the time of the occurrence, and, therefore, Plaintiff may not recover for those injuries which would not otherwise have been sustained.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff MARIO VENTURA, by reason of the warnings and information given to him and his own experience and expertise, was a sophisticated user of the equipment supplied to him to perform his work. Plaintiff MARIO VENTURA's own negligence directly and proximately caused any and all damages and injuries sustained by Plaintiffs.

AS AND FOR A CROSS-CLAIM
AGAINST ALL DEFENDANTS

FIRST: Upon information and belief, that if and in the event the Plaintiffs sustained any damages as alleged in the Complaint, all of which is denied by JUDLAU, said damages were caused by the negligence, culpable conduct and/or wrongful acts of the Defendants, NEW YORK CITY TRANSIT AUTHORITY, MTA NEW YORK CITY TRANSIT, METROPOLITAN TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTION COMPANY, and THE CITY OF NEW YORK, their agents, servants and/or employees, and not through any acts of negligence, culpable or wrongful conduct on the part of JUDLAU, its agents, servants, and/or employees.

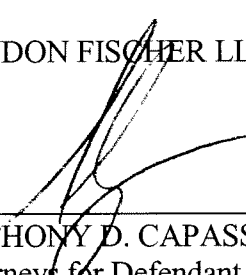
SECOND: By reason of the foregoing, JUDLAU is entitled to full indemnity and/or contribution from, and to judgment over and against Defendants, NEW YORK CITY TRANSIT AUTHORITY, MTA NEW YORK CITY TRANSIT, METROPOLITAN TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTION COMPANY, and THE CITY OF NEW YORK, for the full indemnification, or for contribution in the amount of the excess paid by JUDLAU over and above its equitable share of the judgment, verdict and/or recovery, as determined in accordance with the relative culpability of each party liable for contribution.

WHEREFORE, Defendant JUDLAU CONTRACTING, INC. hereby demands judgment dismissing the Plaintiffs' Complaint herein, and, alternatively, demands judgment against the Defendants, for full indemnification or for contribution in the amount of the excess paid by JUDLAU over and above its equitable share of the judgment, verdict and/or recovery, as determined in accordance with the relative culpability of each party liable for contribution, together with the costs and disbursements of this action, including attorneys' fees, and for such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York
July 9, 2008

LONDON FISCHER LLP

By:



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